

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Hearing Date: May 12, 2010
Hearing Time: 10:00 am

In Re:

MELISSA R. SIMMONS
LAMONT B. SIMMONS

Debtors.

**NOTICE OF MOTION FOR
TERMINATION OF AUTOMATIC
STAY**

Case No.: 07-23060-rdd
(Chapter 13)


Assigned to:
Hon. ROBERT D. DRAIN
Bankruptcy Judge

Please take notice that BAC Home Loans Servicing, L.P. as servicer for The Bank of New York Mellon fka The Bank of New York, as trustee for the Certificateholders CWABS Inc., Asset-Backed Certificates, Series 2005-4, a secured creditor of Debtors, by the undersigned attorneys, will move this Court on the 12th day of May, 2010, at 10:00 am or as soon thereafter as counsel can be heard, at the United States Bankruptcy Court, 300 Quarropas Street Room 520, White Plains, NY 10601 for an Order pursuant to 11 U.S.C. §362(d)(1) and 11 U.S.C §1322(b)(5) terminating the automatic stay as to movant's interest in real property commonly known as 5 Zachary Ct, Chestnut Ridge, NY 10977-6077 and for such other relief as the Court may deem proper.

DATED: April 19, 2010
Buffalo, New York

Yours, etc.

By:


Ehret A. Van Horn, Esq.
STEVEN J. BAUM, P.C.
Attorneys for Secured Creditor
BAC Home Loans Servicing, L.P. as Servicer
for the Bank of New York Mellon FKA the
Bank of New York, as Trustee for the
Certificateholders CWABS Inc., Asset-Backed
Certificates, Series 2005-4
Office and Post Address:
220 Northpointe Parkway, Suite G
Amherst, NY 14228
Telephone 716-204-2400

TO:

MELISSA R. SIMMONS
5 Zachary Court
Chestnut Ridge, NY 10977

Debtors

LAMONT B. SIMMONS
5 Zachary Court
Chestnut Ridge, NY 10977

SHMUEL KLEIN, ESQ.
Law Office of Shmuel Klein P.C.
268 Route 59
Spring Valley, NY 10977

Attorney for Debtors

JEFFREY L. SAPIR, ESQ.
399 Knollwood Road
Suite 102
White Plains, NY 10603

Chapter 13 Trustee

UNITED STATES TRUSTEE
33 Whitehall Street
21st Floor
New York, NY 10004

U.S. Trustee

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In Re:

MELISSA R. SIMMONS
LAMONT B. SIMMONS

Debtors.

APPLICATION

Case No.: 07-23060-rdd
(Chapter 13)

Assigned to:
Hon. ROBERT D. DRAIN
Bankruptcy Judge

BAC Home Loans Servicing, L.P. as servicer for The Bank of New York Mellon fka The Bank of New York, as trustee for the Certificateholders CWABS Inc., Asset-Backed Certificates, Series 2005-4 ("Secured Creditor"), by its attorneys Steven J. Baum, P.C., moves to terminate the automatic stay in this case with respect to the real property commonly known as 5 Zachary Ct, Chestnut Ridge, NY 10977-6077 and states as follows:

1. Secured Creditor is the holder by assignment of a mortgage dated the 25th day of May, 2005 in the amount of \$291,000.00 secured by the premises commonly known as 5 Zachary Ct, Chestnut Ridge, NY 10977-6077 (the "Mortgaged Premises"). A copy of the Note, Mortgage, and Assignment is attached hereto as **Exhibit 'A'**.

2. On the 30th day of October, 2007 Debtors Melissa R. Simmons, Lamont B. Simmons filed a Petition under Chapter 13 of Title 11 U.S.C. §101 et seq with this Court, and an Order for relief was duly entered.

3. The Note and Mortgage provide that the Debtors will be in default if they do not make full monthly payments on each due date. As of the 16th day of March, 2010, the Debtors are due for 6 post-petition payments each in the amount of \$3,304.90 which represents the payments due the 1st day of October, 2009 through March, 2010 and have not cured said default. In addition, the payment due the 1st day of April, 2010 is now due and remains unpaid as of the date of this application. Furthermore, the payment due the 1st day of May, 2010 will be due at the date this motion is heard. A Motion for Relief from Stay Worksheet is attached hereto as **Exhibit 'B'**.

4. That as of the 25th day of March, 2010, there was a total indebtedness owed on the Note and Mortgage in the sum of \$332,349.85. Interest on the unpaid principal balance will continue to accrue, and to protect its security in the Mortgaged Premises Secured Creditor may be required to make further advances for property taxes, insurance and related matters. In addition, there is a judgment lien in the amount of \$720.00 as set out in the Debtors' Schedule D. There are total mortgages and liens in the amount of \$333,069.85.

5. Based on the Schedule A & D attached hereto as **Exhibit 'C'**, said real property is valued at \$450,000.00, and as set forth above the Secured Creditor's lien is estimated at \$332,349.85 as of March 25, 2010.

6. Section 362(d)(1) of the Bankruptcy Code provides in pertinent part that the Court shall grant relief from the stay imposed by Section 362(a) "for cause, including lack of adequate protection of an interest in property..." As set forth above, cause exists to vacate the automatic stay as the Debtor has failed to make monthly post-petition mortgage payments to Secured Creditor. Under Section 362(d)(1), failure to make post-petition mortgage payments constitutes "cause" to modify the automatic stay. See, In re Taylor, 151 B.R. 646 (E.D.N.Y.1993); In re Davis, 64 B.R. 358, 359 (Bankr. S.D.N.Y. 1986); In re Frascatore, 33 B.R. 687 (B. Ct. E.D. Pa. 1983).

7. A Memorandum of Law is submitted herewith.

8. A copy of a proposed Order granting the relief sought by Secured Creditor is annexed hereto as **Exhibit 'D'**.

9. In the event that this motion is scheduled to be heard beyond the time-period set forth in 11 U.S.C. Section 362(e) or is subsequently adjourned beyond said time period, Secured Creditor hereby waives its rights under 11 U.S.C. Section 362(e) and agrees to be bound by the Order of the Court on the instant Motion.

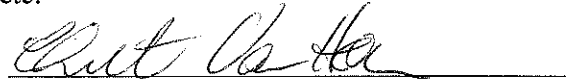
10. No prior application has been made for the relief requested herein.

WHEREFORE, Secured Creditor respectfully requests that an Order be granted terminating the automatic stay immediately as to Secured Creditor's interest in the Mortgaged Premises together with such other, further and different relief as the Court may deem just in this matter.

DATED: April 19, 2010
Buffalo, New York

Yours, etc.

By:



Ehret A. Van Horn, Esq.

STEVEN J. BAUM, P.C.

Attorneys for Secured Creditor

BAC Home Loans Servicing, L.P. as servicer for
The Bank of New York Mellon fka The Bank of
New York, as trustee for the Certificateholders
CWABS Inc., Asset-Backed Certificates, Series
2005-4

Office and Post Address:

220 Northpointe Parkway, Suite G

Amherst, NY 14228

Telephone 716-204-2400